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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/682,615	10/09/2003	Eugene F. Haffner	17742 USA	3254
27081	7590	05/26/2005	EXAMINER	
OWENS-ILLINOIS, INC. ONE SEAGATE, 25-LDP TOLEDO, OH 43666			SMALLEY, JAMES N	
			ART UNIT	PAPER NUMBER
			3727	

DATE MAILED: 05/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/682,615

Applicant(s)

HAFFNER ET AL.

Examiner

James N Smalley

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. ____.  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>10/09/2003</u> .  | 6) <input type="checkbox"/> Other: ____.                                    |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 30 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 30 appears to incorrectly depend from claim 19. The claim is drawn to a method; however claim 19 is an apparatus claim. Examiner proceeds with this Official Action on the assumption that claim 30 actually was intended to depend from claim 27.

### *Claim Rejections - 35 USC § 103*

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-14, 16-25 and 27-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brozell et al. US 6,848,590 in view of McIntosh US 3,286,866.

Brozell '590 teaches a container neck finish (92) and closure, whereby the container neck finish has interrupted threads (100) and (102), with pockets (64), and the closure contains a lug (110) with a shoulder (112) on internal threads (106) and (108), and a sealing flange (42), in the embodiment of figure 24. Noting col. 6, lines 57-58, "Spring lip 42 also maintains a measure of sealing against the container finish."

Brozell '590 does not teach at least two sealing flanges.

McIntosh '866 teaches a closure cap having two annular sealing flanges, which function as a progressive spring whereby a first sealing flange has a greater axial dimension, and is thicker than a second sealing flange. Examiner cites col. 3, lines 30-47, whereby McIntosh '866 teaches the first

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sealing flange (26) is pressed by second sealing flange (24) "thereby establishing a sealing relationship as shown in detail in figures 5 and 6."

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the closure cap of Brozell '590, providing a second sealing flange as taught by McIntosh '866, motivated by the benefit of providing pressure on the first sealing flange, in order to maintain a sealing relationship between the container and closure.

Regarding claims 11-14, Examiner notes the relative orientations of the flanges – the flange of Brozell '590 extending downwardly and radially inwardly, and the flange of McIntosh '866 extending downwardly and radially outwardly – are mechanical equivalents, and the orientation does not materially affect the sealing properties of the flanges.

Furthermore, Examiner notes the flanges of McIntosh '866, being formed of a resilient plastic material, are inherently capable of providing a spring-biasing force.

5. Claims 15 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brozell et al. US 6,848,590 in view of McIntosh US 3,286,866 as applied to claims 1 and 16 above, and further in view of Marks US 3,815,771.

Brozell '590, as modified, does not teach a third sealing ring.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the closure cap of Brozell '590, providing a third sealing ring, as taught by Marks '771, motivated by the benefit of providing increased sealing.

Furthermore, Examiner notes the provision of a third sealing flange is a mere duplication of the working parts of the invention. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the sealing flanges of Brozell '590, providing a third sealing flange, motivated by the benefit of providing more pressure against the first or second annular sealing flanges, because such a modification is mere duplication of the working parts taught by McIntosh '866. It has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

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6. Claims 1-14, 16-25, and 27-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cooke US 4,139,112 in view of Kusz US 5,803,287 and in view of McIntosh US 3,286,866.

Cooke '112 teaches a safety closure cap, comprising an interrupted thread with a recess, and a closure cap having an internal thread with a lug having a shoulder, and a resilient sealing liner to provide a biasing force to the cap.

Cooke '112 does not teach at least two annular sealing flanges.

Kusz '287, between the embodiments of figs. 11 and 12, and teaching in col. 2, lines 60-65, a resilient liner (41a) may be replaced with a resilient sealing flange (41b).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the cap of Cooke '112, providing a sealing flange, because Kusz '287 teaches a sealing flange is a mechanical expedient of a resilient sealing liner.

Kusz '287 does not teach at least two sealing flanges.

McIntosh '866 teaches a closure cap having two annular sealing flanges, whereby a first sealing flange has a greater axial dimension, and is thicker than the second sealing flange. Examiner cites col. 3, lines 30-47, whereby McIntosh '866 teaches the first sealing flange (26) is pressed by second sealing flange (24) "thereby establishing a sealing relationship as shown in detail in figures 5 and 6."

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the closure cap of Cooke '112, providing a second sealing flange as taught by McIntosh '866, motivated by the benefit of providing pressure on the first sealing flange, in order to maintain a sealing relationship between the container and closure.

Regarding claims 11-14, Examiner notes the relative orientations of the flanges – the flange of Cooke '112, as modified, extending downwardly and radially inwardly, and the flange of McIntosh '866 extending downwardly and radially outwardly – are mechanical equivalents, and the orientation does not materially affect the sealing properties of the flanges.

Furthermore, Examiner notes the flanges of McIntosh '866, being formed of a resilient plastic material, are inherently capable of providing a spring-biasing force.

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7. Claims 15 and 26 rejected under 35 U.S.C. 103(a) as being unpatentable over Cooke US 4,139,112 in view of Kusz US 5,803,287 and in view of McIntosh US 3,286,866 as applied to claims 1 and 16 above, and further in view of Marks US 3,815,771.

Brozell '590, as modified, does not teach a third sealing ring.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the closure cap of Brozell '590, providing a third sealing ring, as taught by Marks '771, motivated by the benefit of providing increased sealing.

Furthermore, Examiner notes the provision of a third sealing flange is a mere duplication of the working parts of the invention. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the sealing flanges of Brozell '590, providing a third sealing flange, motivated by the benefit of providing more pressure against the first or second annular sealing flanges, because such a modification is mere duplication of the working parts taught by McIntosh '866. It has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

### **Conclusion**

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

US 4,955,504	US 3,944,104
US 4,667,839	US 3,888,373
US 4,429,802	US 3,844,439
US 4,360,114	


Any inquiry concerning this communication or earlier communications from the examiner should be directed to James N Smalley whose telephone number is (571) 272-4547. The examiner can normally be reached on M-Th 9-6:30, Alternate Fri 9-5:30.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young can be reached on (571) 272-4549. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

jns

  
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